IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9457 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JINNATHBEEBI KASAMIYA MALEK

Versus

DISTRICT EDUCATION OFFICER

Appearance:

MR AM RAVAL for Petitioner

MS MANISHA LAVKUMAR for Respondent Nos.1,2 & 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/01/2001

ORAL JUDGEMENT

1. The petitioner's husband was serving as a Peon in the office of the District Education Inspector at Nadiad. He died while in service on 15-6-1949. No family pension, gratuity and retirement benefits were given to the petitioner after the death of her husband. Likewise, no economic assistance to the widow as approved by the Government has been sanctioned. It is said that, the petitioner is an illiterate lady who was not aware how to get family pension, nor the Government has sanctioned any family pension to her. Family pension form was subsequently filled up by Mehmedabad Nagar Panchayat in

accordance with Government Resolution dated 11-5-1990. There is an endorsement in the said form Annexure-'C' from the office of the District Education Officer where the petitioner's husband was serving. Form-'C' was also filled up by the petitioner for authorization of family pension, and on the said form, there is endorsement and signature of the District Education Officer, Kheda vide Annexure-'B'. She being illiterate gave her thumb impression on this document vide Annexure-'G'.

2. The grievance of the petitioner is that, inspite of completion of all the formalities, she has not been paid provident fund amount, gratuity, family pension, etc. It is, therefore, this petition, where direction is sought that respondent should grant family pension to the petitioner or to grant economical assistance to the petitioner as is given to other widows of government servants and to pay family pension to the petitioner from 1949 together with interest at the rate of 18% per annum and also to pay to the petitioner death-cum-retirement gratuity. Writ of Mandamus has, therefore, been sought because of inaction of the respondent authorities in not granting family pension, retirement benefits, etc. to the petitioner.

3. Shri AM Raval for the petitioner and Ms.Manisha Lavkumar, learned AGP representing respondent nos.1,2 and 4 have been heard.

4. Counter affidavit has been filed by Shri PF Pargi, respondent no.1, in which the stand is that, there is no record in the office that the petitioner's husband was serving as a Peon in the office of the District Education Inspector at Nadiad. This office came into existence on 1-6-1953 and no records are available in this office. However, one Shri Purushottam Bhavanishankar Shukla, retired Education Inspector gave some statement that the deceased Kasam Malek had served in the department. However, subsequently he retracted from his statement. Thereafter, statements of other employees who worked in the said department right from 1918 to 1956 were also recorded, and they categorically stated that Kasam Malek had not served in the department. It is also the stand in the counter affidavit that the petitioner did not produce any document or evidence in the nature of appointment letter, last pay slip, provident fund and gratuity order, etc. As such, no action could be taken on the request of the petitioner. Shri Raval has, however, contended that the petitioner is illiterate widow and she is not having any proof in the nature of appointment letter, last pay slip or slips of

provident fund contribution made by the deceased. He had however shown to the learned AGP two documents today to show that the petitioner's husband had worked in the office of the respondent no.1. He has also drawn my attention to Annexures-'C' and 'D' in support of his contention that these forms 'B' and 'C' were filled by the officers of the concerned department where the petitioner's husband was working. Form-'C' Annexure-'D' is also signed by the District Education Inspector. According to him, these two documents furnish sufficient material to indicate that deceased Kasam Malek was working as a Peon in the office of the District Education Inspector, Nadiad, who died on 15-6-1949. Other information is also given in these two documents. He has, therefore, contended that it is incorrect that there was no material before the authority, respondent no.1 to grant family pension and other retirement benefits. Learned AGP has, however, argued that in case the petitioner is possessing requisite proof, she can make a representation to the respondent no.1, who shall consider the same in accordance with rules and government resolutions on the subject.

5. In view of this, the petition is finally disposed of with a direction to the petitioner to make a representation through her advocate Shri AM Raval by Regd.A.D. Post to the respondent no.1 alongwith requisite proof, especially two documents shown to the learned AGP today and also enclosing copy of Annexures-'C' and 'D' of the writ petition and also such other documents as are in possession of the petitioner within 15 days from today. On receipt of representation, the respondent no.1, District Education Officer, Kheda, District Nadiad shall decide the representation through speaking order within a period of 30 days from the date of receipt of such representation and shall communicate the decision to the petitioner's counsel Shri AM Raval by Regd.A.D.Post. This petition is accordingly finally disposed of with no order as to cost.

January 9, 2000. [D.C. Srivastava, J.]

/sakkaf